

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 26, 1999 at 9:00 A.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 203, SB 230, SB 231, SB 259, 1/23/1999
Executive Action: SB 230, SB 231, SB 259

HEARING ON SB 203

Sponsor: SEN. SUE BARTLETT, SD 27, Helena and Unionville

Proponents: Clay Smith, MT. Attorney Generals Office
Wade Cooperider, MT. Sheriff and Peace Officers Association
George Bennett, MT. Bankers Association

Mike Malign, MT. Collection Association
Dennis Paxinos, Yellowstone County Attorney
Jeff Koch, Collection Bureau Services
Bob Pyfer, MT. Credit Unions League
Mary Phippen, MT. Association of Clerks of
District Court
Keith Colbo, MT. Independent Bankers
Richard Rowe, Levying Officer, Equity
Management Co.

Proponents: Regan Whitooth, Attorney

Opening Statement by Sponsor:

SEN. SUE BARTLETT advised that this bill addresses the procedures used to collect debts after judgement is awarded against a debtor, and is a result of the Supreme Court decision in Dorwart vs. County of Stillwater. **SEN. BARTLETT** explained in the Dorwart case deputy sheriffs were trying to serve two writs on Mr. Dorwart. He was arrested and charged with DUI. The deputies then entered into Mr. Dorwart's home through an unlocked door and seized some items listed in the Writ of Execution without Mr. Dorwart's permission. Mr. Dorwart claimed these actions violated his Constitutional rights involving illegal search and seizure, privacy, and right to receive due process before his property was disposed of to satisfy the judgement under the Montana Constitution. The Montana Supreme Court ruled in favor of Mr. Dorwart. It ruled that entry into a private home to serve a writ is subject to search and seizure provisions and a writ is not adequate to authorize such entry. Also, the entry violated Mr. Dorwart's right to privacy, and current post judgement execution statutes violate United States and Montana Constitutional Amendment of due process. **SEN. BARTLETT** stated this had a substantial impact on lawful collection.

SEN. BARTLETT then explained each section of the bill, it's purpose and the impact. She advised the committee that several parties had input in the content of this bill, and while the bill doesn't contain everything each party wanted, it does contain everything those parties felt would be necessary to make the law compliant with the Supreme Court's ruling. The court's decision has caused a tremendous amount of confusion and this bill excludes any controversial language as it is essential the law is corrected and clarified. She added that the effective date was upon passage.

{Tape : 1; Side : A; Approx. Time Counter : 9:10}

Proponents' Testimony:

Clay Smith, MT. Attorney General's Office, noted he had assisted **SEN. BARTLETT** in the drafting of this bill. **Mr. Smith** added the Mt. Supreme Court did not actually declare provisions of law unconstitutional but said due process rights were violated as statute applied, and Sections 1-3 of SB 203 were to ensure in the future, when post judgement executions were applied they will be applied in a consistent manner and in line with the Montana and US Constitutions.

Wade Cooperider, MT. Sheriff and Peace Officers Association, entered **EXHIBIT(jus20a01)**, a definition of terms. **Mr. Cooperator** advised the Committee he has been a deputy for 10 years and involved in the civil process for five years. He was involved in the drafting of this bill and feels it serves to clarify the law and prevent future problems as in the Dorwart case.

George Bennett, MT. Bankers Association, advised between the time the Mt. Supreme Court issued the original decision and then later clarified their decision, there has been a great deal of confusion in the industry. **Mr. Bennett** explained the financial institutions not only collect loans but they also serve execution on accounts, and have been weary to accept or obtain Writs of Garnishments and Warrants of Dstraint. **Mr. Bennett** noted this was affecting the Department of Revenue, Child Support Enforcement Division, and creditors because institutions do not want to levy accounts for judgement. **Mr. Bennett** further noted this bill gives a clear direction of the law.

Otis McCullough, Process Plus, advised he was in favor of a bill to clarify the law but due to the different interpretation from court to court, he thought there should be uniform forms. **Mr. McCullough** expressed concern with levying officers entering in private residences. He felt there was no need for this and was concerned as to how someone might use this authority. He noted there is a bond requirement of \$10,000 and there could be a correlation of damages, thus increasing the bond requirements. **Mr. McCullough** noted there was no provision for private process servers to sell items received after executing a garnishment, and he requested the allowance to serve the writ be continuous for 60 days to reduce the paperwork. **Mr. McCullough** requested clarification on two issues. Section 4 stated a Writ of Execution subscribed by the clerk and he wondered if that includes a judge. Section 5 states officers shall execute a writ no later than 60 days after receiving, he noted the life of the writ is only 60 days and if someone received the writ after 30 days could that be used to extend the date?

Mike Moore, Attorney and President of MT. Collection Association, confirmed this bill was a collaborative effort and feels the concerns of the court in the Dorwart case have been addressed. **Mr. Moore** stressed it is important this bill gets through to clarify the law.

Dennis Paxinos, Yellowstone County Attorney, advised the Committee he supports the bill but recommended changes to close possible loopholes. **Mr. Poisonous** specifically noted concerns with the notification process, and the inability to sometimes locate individuals. **Mr. Poisonous** felt the bill should be amended to state the creditors, not the servers, should be required to notify the individual by certified mail and the server should also mail a notice by standard mail. **Mr. Poisonous** advised sheriffs and deputies were concerned about their liability, and felt the bill should state they would act as agents for the creditor so lawsuits were against the creditor and not the sheriff.

Jeff Koch, Owner of Collection Bureau Services, advised the committee he felt this bill met the requirements. **Mr. Koch** noted there are currently 56 different rules for the justice courts and district courts combined. **Mr. Koch** stressed the need for uniformity. **Mr. Koch** stated the certified mailing question had been discussed and all questions should be directed to **Clay Smith** or attorney **Vandermore**.

Bob Pyfer, MT. Credit Union League, advised the Committee the Credit Union League supported the intent of this bill, and expressed concerns with liability in honoring writs. **Mr. Puffer** noted the Credit Union League is interested in standard forms and a continuing writ, however he didn't want to see the bill killed for these reasons.

Mary Phippen, MT. Assoc. of Clerks of District Court, supported the bill, and recommended a Do Pass. **Ms. Phippen** concurred with other proponents in that there are several interpretations of the law for issuing writs.

Keith Colbo, MT. Independent Bankers, recommended Do Pass and noted the issues raised by the Dorwart decision need to be resolved.

Richard Rowe, Levying Officer Equity Management Company, advised the Committee they execute over 30,000 levies and the Dorwart case has had a direct effect on the business. **Mr. Rowe** expressed support for this bill, however he was in support of a continuing writ, due to the inconvenience caused to employers who are

unhappy to begin with, and the cost to renew each time a writ is levied.

{Tape : 1; Side : A; Approx. Time Counter : 9.35}

Opponents' Testimony:

Regan Whitooth, Attorney, advised the Committee he was in favor of what the bill was attempting to do, and felt if civil judgements were not enforceable they were meaningless. **Mr. Whitooth** stated he feels the decision still is unclear and changing, therefore it was good to set procedures for notices and hearings. **Mr. Whitooth** opposed the bill because he felt there should be a uniform form for all courts to utilize. **Mr. Whitooth** added he felt it was a mistake to make the server an agent of the creditor as an agent of the court had more rights.

Questions by the Committee:

SEN. HALLIGAN asked **Clay Smith** for his opinion on the form. **Mr. Smith** advised he felt the MT. Supreme Court needed to make the form and concurred it was time for them to do that with several forms. **Mr. Smith** recommended the form not be added but rely on the Judicial Branch for forms and rule changes. **Mr. Smith** addressed other questions as follows: The certified letter was not required by the Constitution and he felt if the letter was sent to the last known address it would satisfy the Constitutional requirement. A continual writ is complicated and felt this bill needed to be adopted to fix a large problem now. He noted a lifetime for a writ is only 60 days.

SEN. GRIMES asked **Mr. Smith** his opinion of making an officer of the court an agent of the creditor. **Mr. Smith** maintained that agent of the court should not be an agent of the creditor. He noted this is a policy issue and should be addressed by the Committee.

SEN. DOHERTY wondered who was liable, the court or the creditor? **Mr. Smith** advised this issue was a technical issue and not addressed by the court. **Mr. Smith** felt the liability was assumed by the State if the service was preformed by a sheriff or officer of the court. If the service was performed by a private individual, their insurance would cover. However, he was unclear if that would be a court decision.

Mr. Whitooth advised that servers could not be an agent for the creditors since creditors had no right to serve on their own. He noted if an agent does something unlawful it is done on their

own, and not by the creditor. **Mr. Whitooth** advised in respect to **Dorwart**, the bill should make civil judgements enforceable and not cause new litigation, therefore the agent issue should not be added on this bill.

Closing Statement:

SEN. BARTLETT stressed the proponents made clear the difficulties with respect to the decisions by the court in the Dorwart case.

SEN. BARTLETT noted this bill sets up a clear procedure and makes it more likely the law and procedures will be compliant with the MT. Supreme Court's decision. **SEN. BARTLETT** added the bill does not contain controversial items because the law needs to be corrected and by having a general agreement the bill can proceed.

{Tape : 1; Side : B; Approx. Time Counter : 9.55}

HEARING ON SB 259

Sponsor: SEN. DUANE GRIMES, SD 20, CLANCY

Proponents: Judy Wong, Assistant Attorney, City of Missoula
 Nancy Knight, MT. Coalition Against Domestic
 and Sexual Violence
 Matthew Dale, Executive Director of the
 Helena Friendship Center
 Rebecca Moog, MT. Women's Lobby
 Kelly Slattery Robinson, formerly Battered
 Women's Shelter
 Julie Turned, Social Worker for Missoula
 Youth Homes
 Patrina Simss, Missoula County Family
 Violence Center and Advocate for YWCA

Opponents: None

Opening Statement by Sponsor:

SEN. GRIMES advised the Committee currently there is a \$30.00 fee payable with each divorce filing. This fees goes to the Domestic Violence Program and generates approximately \$148,000 in revenue annually. The Domestic Violence Program contracts with 21 service providers for service contracts statewide. **SEN. GRIMES** explained the service contracts were awarded on a competitive basis to non profit agencies whose goal is to assist victims of family violence with emergency food, shelter, and counseling and to provide program participants with advocacy education assistance, legal assistance, and referrals to other agencies.

SEN. GRIMES told the committee the \$148,000 was a drop in the bucket compared to the results being achieved and the money saved by keeping families together and out of therapeutic foster care.

SEN. GRIMES advised the committee he was not asking to increase the fees but the legislation allowing the fees had a sunset and CI-75 mandated the new request for these fees had to go on the ballot and be voter approved. **SEN. GRIMES** felt the voters would approve the continuance of the fee.

Proponents' Testimony:

Judy Wang, Attorney for City of Missoula, stated not all domestic violence cases go through the court and without hot lines and shelters many women and children who are fleeing for their lives would have nowhere to go and could end up dead. **Ms. Wang** felt supporting this bill was a way to take a stance against violence. Written testimony - **EXHIBIT(jus20a02)**.

Nancy Knight, MT. Coalition Against Domestic and Sexual Violence, advised there are 46 shelters and safe homes currently assisting victims and children. **Ms. Knight** stated shelters provide public education, counseling, and community referrals, with five new programs allowing all counties to have a shelter. **Ms. Knight** felt without this fee funds for outreach crisis lines and information would be insufficient to maintain the program.

Matthew Dale, Friendship Center, stated the Friendship Center was a provider for Lewis and Clark, Broadwater, and Jefferson Counties. Mr. Dale informed the Committee the fees have allowed an increase in their budget of 19%, which he noted was a huge increase for a non profit agency. The number of victims assisted had increased 68% and included 26 additional children. **Mr. Dale** added that without the fee the programs would be scaled back and urged support of the bill.

Rebecca Moog, MT. Womens Lobby and survivor, stated the funding is necessary and essential for MT. families.

Kelly Robinson, formerly with Battered Women Shelter, advised the Committee when she started 9 years ago there were 1.5 employees now there are 3.5 full-time and 3 part-time children advocates. **Ms. Robinson** stated the cost for therapeutic foster care was \$66.68 per day, and counseling and education received in the shelter was far less.

Julie Turned, Social Worker, advised the Committee there is a need for safe harbor for victims. **Ms. Turned** stated safe shelters help build self esteem and she felt parents and children

should be kept together since counseling can help break the cycle of violence and keep the children out of the system.

Patrina Sims, Missoula County Family Violence Center, stated she was a victim of domestic abuse and without the shelter she believed she would have been killed. **Ms. Sands** said her ex-husband had repeatedly beat her and she felt controlled and powerless. **Ms. Sands** told the Committee she used a hotline to seek shelter for herself and her three children. She noted all are now doing good. Written testimony - **EXHIBIT(jus20a03)**.

Additional exhibits, written testimony of James Hubble, **EXHIBIT(jus20a04)**, and written testimony of Tess Nielson, **EXHIBIT(jus20a05)**.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

{Tape : 1; Side : A; Approx. Time Counter : 10:10}

Closing by Sponsor:

SEN. GRIMES stated two years ago 7,000 to 8,000 persons were assisted by the shelters and programs. **SEN. GRIMES** advised the House may state the fees are unfairly targeting males and is providing another infringement on family rights, however, he believed these are dysfunctional, egocentric, and power issues that devastate children, families, and put lives at risk. He noted that these are criminal actions. These fees help put families back together and keep people out of the welfare system.

HEARING ON SB 230

Sponsor: **SEN. DUANE GRIMES, SD 20, CLANCY**

Proponents: None

Opponents: None

Opening Statement by Sponsor:

SEN. GRIMES advised this bill was a code commissioner bill resulting from a court case involving two counties concerning trial venues. **SEN. GRIMES** stated that the MT. Supreme Court said there was inconsistency in the language and therefore this bill strikes lines 20 and 21 of the current law, clarifying the issue of proper venue.

Questions from Committee Members and Responses:

SEN. HOLDEN asked if this issue had been dealt with in the 1995 Legislative Session. He also asked why there was a need to delete lines 20 and 21. **SEN. HALLIGAN** stated the issue of venue had been dealt with previously but not specifically for a case relating to counties. Previous issues were with railroads and out-of-state defendants.

Closing by Sponsor:

SEN. GRIMES explained there was a death that occurred in Yellowstone County but due to the verbiage the venue was handled by another county. Striking lines 20 and 21 will not allow this to happen again.

{Tape : 1; Side : B; Approx. Time Counter : 10.15}

HEARING ON SB 231

Sponsor: SEN. REINY JABS, SD 3, Hardin

Proponents: None

Opponents: None

Opening Statement by Sponsor:

SEN. JABS stated this bill clarifies the term of office, and effective date of office for a Justice of the Peace. **SEN. JABS** advised the committee current law states the Justice of Peace will take office on the first Monday of January, and this year that wasn't until January 4th. This bill will make the effective date the same as other county officers, December 31st.

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. JABS closed on SB 231.

EXECUTIVE ACTION ON SB 231

Motion/Vote: **SEN. HALLIGAN** moved that **SB 231 DO PASS**. Motion carried unanimously (6-0) with **SENATORS BARTLETT, DOHERTY,** and **GROSFIELD** being absent for the vote.

EXECUTIVE ACTION ON SB 230

Motion/Vote: SEN. HALLIGAN moved that SB 230 DO PASS. Motion carried unanimously (6-0) with SENATORS BARTLETT, DOHERTY, and GROSFIELD being absent for the vote.

EXECUTIVE ACTION ON SB 259

Motion: SEN. GRIMES moved that SB 259 DO PASS.

Discussion:

SEN. HOLDEN questioned line 18 which stated zero and asked for clarification. SEN. GRIMES advised the fee stays the same as it is now, \$30.00. The Committee was advised with CI-75 the wording had to be as written.

SEN. HOLDEN clarified this would only continue the current program and not increase the fee. SEN. GRIMES concurred and added the original fee was subject to sunset and there was no problem foreseen in renewing the fee, however since CI-75 it must now be voted on by the public.

SEN. JABS asked for clarification on the \$140,000 generated and wondered if that money came from source other than divorce filings. SEN. GRIMES responded that it was only from divorce filings. The original fiscal note projected \$120,000 so there must have been quite a few more divorces than projected.

VOTE: The motion carried (6-0) with SENATORS BARTLETT, DOHERTY, and GROSFIELD being absent for the vote.

ADJOURNMENT

Adjournment: 10:30 A.M.

SEN. LORENTS GROSFIELD, Chairman

JUDY KEINTZ, Secretary

LG/JK

EXHIBIT (jus20aad)